



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department of Health
VAC Chapter Number:	12 VAC 5-585
Regulation Title:	Biosolids Use Regulations
Action Title:	Land Applicator Certification amendments
Date:	March 30, 2005

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Biosolids Use Regulations (12 VAC 5-585) are to be amended to provide regulations and standards for training, testing and certification of persons land applying Class B sewage sludge (biosolids) in the Commonwealth, and for revoking, suspending or denying such certification from any person for cause. The amended regulations are to include standards and criteria for the approval of instructional programs to be taught by governmental entities and by the private sector for the purpose of certifying biosolids land applicators.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Legislation was passed by the General Assembly (SB 1088, Acts of Assembly c. 681, 2003) and signed into law by the Governor, amended § 32.1-164.6 of the Code of Virginia (available electronically at <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0681>), requiring that the State Board of Health (Board) adopt regulations for Certification of Sewage Sludge Land Applicators. The Board, with the assistance of the Virginia Department of Health (VDH), the Department of Environmental Quality and the Department of Professional and Occupational Regulation are to promulgate the regulations and standards required by the amended Code of Virginia and no person shall land apply Class B sewage sludge pursuant to a permit under §32.1-164.5 or § 62.1-44.19:3 of the Code of Virginia unless a certified sewage sludge land applicator is onsite at all times during such land application, as of 180 days following the effective date of the amended regulations. (The Office of the Attorney General has concluded that the proposed amendment is within the scope of authority of the State Board of Health as granted under Title 32.1 of the Code of Virginia) .

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This regulation amendment is designed to provide a consistent and uniform set of state requirements that will ensure that a qualified individual is supervising operations in which biosolids are land applied. It is anticipated that the development of state requirements will help improve the credibility of the VDH permit program and prevent extended litigation brought by permitted entities concerning restrictive local government ordinances that would effectively ban land application of biosolids.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The proposed amendment to the Regulations will involve the addition of new sections, 12 VAC (5-585-760 through 830) addressing standards for training, testing and certification of persons land applying Class B biosolids in the Commonwealth, and for revoking, suspending or denying such certification from any person for cause (attached). The land applicator must have a certified individual on site and if the certified land applicator leaves the site they must be available to return to that site within 30 minutes and if not so available, then the land application operation must be shut down at that site. The certified land applicator must provide required identification upon request by VDH staff or local government representatives.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The State Board of Health approved the submittal of a Notice of Intended Regulatory Action (NOIRA) for an amendment to the Regulations concerning certification of land applicators at its July 22, 2004 meeting. An Ad Hoc Advisory Committee assisted the Virginia Department of Health (VDH) in developing the draft amendment language that reflects the recommendations received from a majority of committee members. The NOIRA public comment period closed on January 13, 2005. The public comments received up to that date did not raise any new issues that had not been discussed at the Ad Hoc Advisory Committee meetings. The draft amendment was brought before the State Board of Health at their January 21, 2005 meeting for consideration of initiating the rulemaking process. The State Board of Health approved the draft amendments as proposed with two minor revisions concerning the conditions under which a certified land applicator is "on-site" at the location of land application of biosolids. The State Board of Health requested that the draft language be revised from "is considered to be onsite," to "may be considered to be onsite." The State Board of Health also requested that the amendment specify that certified land applicators make their credentials available if requested. The draft amendment was revised to require the applicator to have the certificate number issued by VDH and their personal identification with them at the land application site.

The advantage of adopting the requested amendments is that the credibility of this controversial state permit program will be enhanced. By establishing reasonable requirements for certifying land applicators, the most economical and most beneficial means of sludge management will continue to be available to the owners of sewage treatment works, who are primarily metropolitan governments.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Currently, nearly 200,000 dry tons of biosolids are land applied each year in 20 to 30 Counties, on approximately 42,000 acres of farmland. The potential cost savings and production increases, for the farmers that receive biosolids as a substitute fertilizer, has been estimated to range from \$50, to more than \$100, per acre farmed. The VDH implements the Regulations through the Office of Environmental Health Services, using about 2 years of staff time annually at a cost of approximately \$150,000.

The cost of training individuals to achieve and hold certification will be borne by the land application companies as part of the price of doing business. Formal training of nutrient management planners is conducted by the Department of Conservation and Recreation (DCR) in conjunction with a certification program. The DCR training costs is less than \$100 for a 4 day session and could be used to partially satisfy training requirements for certification of land applicators. The land application companies have indicated that they will need to certify a number of employees relative to the size of their operations.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The Biosolids Use Regulations (Regulations) provide the means to protect public health from improper and unregulated disposal of sewage sludge. However, the opponents of the land application of biosolids have insisted that land application operations on permitted sites are not being adequately supervised. These amendments are designed to provide a consistent and uniform set of state requirements that will ensure that a qualified individual is supervising operations in which biosolids are land applied. It is anticipated that the development of state requirements will eliminate the need to develop non-uniform local requirements in these areas of concern and prevent extended litigation, brought by permitted entities, concerning restrictive local government ordinances.

The requested amendments to the Biosolids Use Regulations will involve the following specific sections of the regulations:

1. 12 VAC 5-585-760

An individual holding a valid certificate of competence as specified in the Biosolids Use Regulations (certified land applicator) must be onsite at all times during such land application. A certified land applicator may be considered to be onsite if they are at the site permitted for land application and, if it is necessary to leave the site, they are available within 30 minutes to return to the site to verify and ensure that land application of biosolids is in compliance with the issued permit. A certified land applicator shall have the certificate number issued by VDH and personal identification with them at the land application site. The Department may certify land applicators based on specified areas of training, experience and level of knowledge as demonstrated through successful completion of examinations as acceptable to the Department.

2. 12 VAC 5-585-770

The applicant for certification must submit a completed form with information relating to their education, work experience, knowledge of land application of biosolids and applicable regulations, and willingness to abide by the requirements of the Biosolids Use Regulations. Also, applicants would be required to document their education, training and experience. Applicants must pass an examination in order to receive a 2 year certification, unless they can document current certification from an approved land applicator certification program in another state.

3. 12 VAC 5-585-780

The Department will charge fees for training, testing and certifying land applicators. A fee of \$100 is required for the initial certification and subsequent renewals.

4. 12 VAC 5-585-790

The Department may offer the land applicator certification examinations on request and will schedule an examination at least once per year. The examinations shall require a demonstration of the ability to ensure that biosolids will be land applied in compliance with the requirements of the Biosolids Use Regulations. The examinations for qualified applicants for a certificate of competence in accordance with this chapter shall address: a general understanding of biosolids treatment processes and biosolids characteristics and public health protection concepts; knowledge of the basic principles of soils, agriculture, silviculture, land application concepts and site management and operations; familiarity with occupational safety and health protection concepts; knowledge of land applicator training and certification requirements and familiarity with the requirements of other land application related laws, regulations, and incentive programs. Applicants taking the examination will be notified as to whether they achieved or did not achieve the passing score established by the Department. A certificate with an established renewal date will be issued to applicants that pass the examination.

5. 12 VAC 5-585-800

The Department will provide training sessions at least annually on various topics essential to ensuring that land application of biosolids complies with state and federal laws and regulations .

The training may include biosolids use regulations; basic soil and crop science; soil fertility; environmental management; and other relevant topics.

5. 12 VAC 5-585-810

A certificate is to be renewed every two years and may be renewed on or before the expiration of a certificate by complying with certain requirements including: payment of the renewal fee and supplying proof of satisfactory completion of at least four hours of continuing education course work within the past two years. The completed course work must be approved by the Department as providing satisfactory training.

5. 12 VAC 5-585-820

A certificate will expire if not renewed. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all applicable requirements of 12 VAC5-585-770. The Department will attempt to notify the certified land applicators of any continuing education needs and other requirements as necessary for certificate renewal 90 days or more prior to certificate expiration.

5. 12 VAC 5-585-830

If the Department finds that a certified land applicator or an applicant for certification violated any applicable requirements of this chapter, including the listed procedural violations, the Department may deny, suspend or revoke certification, following the informal fact-finding procedures of the Virginia Administrative Process Act (§2.2-4019 et seq. of the Code of Virginia).

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Virginia Department of Health may elect to request the that State Board of Health consider the following alternatives:

1. Do not revise the Biosolids Use Regulations,
2. Revise the entire set of Biosolids Use Regulations, or
3. Revise the sections of the Biosolids Use Regulations dealing only with the amendment for certification of land applicators.

Failure to provide specific State requirements as requested will likely result in local adoption of ordinances with varying non-uniform requirements, that could have significant financial impacts on the regulated entities. Court challenges are likely to result from inconsistent and overly restrictive local ordinances, leading to expensive litigation. Although additional requests for revisions to the Biosolids Use Regulations have been submitted by local governments and private individuals, the process of revising the entire set of the Biosolids Use Regulations will likely become a long drawn out process, as the land application of biosolids is a highly controversial subject. Thus, the Virginia Department of Health is electing to recommend that only the previously listed sections of the Biosolids Use Regulations be revised at this time.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The NOIRA was published in the Virginia Register on December 13, 2005 in Volume 21, Issue 7, Page 772. The public comment period closed on January 13, 2005. A summary of the comments received and the Agency response is as follows:

SUMMARY OF COMMENT

1. The Department of Conservation and Recreation (DCR) expressed support for the amendment and indicated that they would continue to participate in the subsequent training program upon implementation of the amendment.
2. Recyc Systems expressed strong support for a certification program for land application field managers who would be on-site at land application operations. Recyc Systems recommended that the certified land applicators be knowledgeable in the areas of nutrient management and soil science. Recyc Systems also recommended that VDH be flexible in scheduling sufficient classes and testing to meet the certification demand and that the certification exam be designed to conform with the general education backgrounds of land applicators.

AGENCY RESPONSE

1. VDH Biosolids Program staff will work with DCR Nutrient Management Program staff to develop the certification training program.
2. The certification program will include the areas of nutrient management and soil science. VDH recognizes that the scheduling of training classes and the scheduling and content of certification examinations must meet the needs of land applicators.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

In drafting the proposed Regulations, the Board strove to write provisions that are clear and easily understandable by the individuals and entities affected. The Board has determined that the regulations are clearly written and will be easily understood.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The State Board of Health will review and reevaluate the proposed amended regulations within three years of their becoming effective in order to determine whether they should be continued, amended or terminated.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action will have no anticipated or associated impacts on family rights to educate and supervise children. It will not discourage economic self-sufficiency and family responsibilities and commitments or decrease disposable family income.